

ITEM NO: 17

SUBJECT: DRAFT AMENDMENT 9 TO LEP 2015 (4 MERRIWA STREET, KATOOMBA)

FILE NO: F10390 - 17/85083

Delivery Program Link

Principal Activity: Using Land

Service: Land Use Management

Recommendations:

1. *That the Council endorses the draft Planning Proposal prepared under s.55 of the Environmental Planning and Assessment Act 1979 for the inclusion of an additional permitted use of 'registered club' on land at 4 Merriwa Street, Katoomba under Blue Mountains Local Environmental Plan 2015;*
 2. *That the Council refers the draft Planning Proposal for Local Environmental Plan Amendment 9 to the Greater Sydney Commission for Gateway Determination under s.56 of the Environmental Planning and Assessment Act 1979;*
 3. *That the Council requests Written Authorisation to Exercise Delegation over the Planning Proposal in accordance with clause 23 of the Environmental Planning And Assessment Act 1979;*
 4. *That the Council includes a request to the Department of Planning and Environment that the draft Planning Proposal be designated low impact;*
 5. *That the Council notes the Blue Mountains Local Environmental Plan 2015 Amendment 9 will be processed in accordance with the Gateway Determination; and*
 6. *That the Council receives a report, subject to the Gateway Determination, at the conclusion of the notification period to enable consideration of submissions made to Blue Mountains Local Environmental Plan 2015 Amendment 9.*
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Report by Director, Development & Customer Service:**Reason for report**

The Council has received an application to permit with consent an additional land use on land at 4 Merriwa Street, Katoomba. The draft Planning Proposal seeks to include the land use, *registered club* in Schedule 1 - Additional permitted uses of Blue Mountains Local Environmental Plan 2015 (LEP 2015) on Lot 1 DP 124212 at 4 Merriwa Street, Katoomba. The intent is to allow for the extension of this use from the site of Katoomba RSL, onto the adjoining land at 4 Merriwa Street. A copy of the Planning Proposal is provided as Enclosure 1 to this business paper.

The purpose of this report is to inform the Council of the proposal and for the Council to determine whether to proceed to include *registered club* in Schedule 1 Additional Permitted Use of LEP 2015, for Lot 1 DP124212 (4 Merriwa Street).

The report describes the subject land and explains the justification and intended outcome of the proposed amendment.

Site context

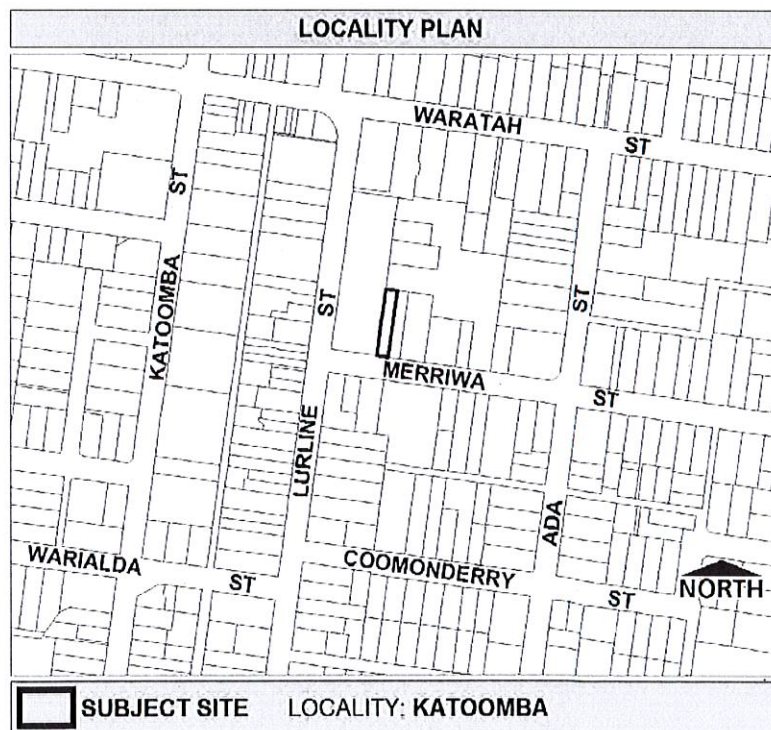
The subject site has a total area of 581m² and is located approximately 800m south-east of the Katoomba train station (refer Locality Plan below). The site is rectangular in shape and is orientated along a north-south axis with a frontage of approximately 10m to Merriwa Street.

The site contains a single storey dwelling house and a detached building, located at the rear of the property. Vehicular access to the site is provided informally via the adjoining Katoomba RSL (Lot 1 DP 1006352). Council records do not indicate an access easement across the adjoining RSL land.

Development in the immediate vicinity of the subject site includes the Katoomba RSL, which adjoins the site to the west, and Katoomba Primary School which adjoins both the northern and eastern property boundaries of the subject site. The southern site boundary forms the Merriwa Street frontage. Development on the southern side of Merriwa Street includes a hotel and residential development. Further to the north is the Clarendon Hotel.

Properties to the west of the subject land (including the site of the former RSL club), to the north-west and south-west are currently deferred out of LEP 2015 and maintain the Village - Tourist zoning under LEP 2005. The site and adjoining lots to the north-east, east and south-east are zoned R2 Low Density Residential under LEP 2015.

The site is not affected by environmental constraints and is not mapped as bush fire prone land.





Background

The subject site adjoins the site of the former RSL club on its western boundary. The RSL has existed on that site since 1923, with Council records for the RSL club going back to the early 1960s.

On the 24 February fire broke out at Katoomba RSL and substantially destroyed the building. The remnants of the building have since been demolished and the site cleared. Subsequently, and as part of planning for the re-establishment of an RSL on the site, Katoomba RSL has purchased the adjoining property at 4 Merriwa Street, with the intention of expanding the proposed new RSL building onto that land. This provides for a single storey design outcome for the site, rather than increasing height in this locality. This site is the subject of this Council Report and the attached Planning Proposal.

Council staff have been working with Katoomba RSL to determine the most time efficient planning process to establish permissibility for an expansion of the RSL use onto the newly purchased site at 4 Merriwa Street. The approach described in this report and the attached planning proposal is considered to both achieve the planning intent and streamline the process through the Department, such that a development application can be lodged and the RSL rebuild be expedited.

Planning Context (LEP 2015 and LEP 2005)

The site of Katoomba RSL is currently deferred from LEP 2015 and remains zoned Village – Tourist under LEP 2005. Under LEP 2005, the RSL land use would be defined as a *club*, being a “*building used by persons associated, or by a body incorporated, for social, literary, political, sporting, athletic or other lawful purposes whether of the same or a different kind and whether or not the whole or part of such building is the premises of a club registered under the Registered Clubs Act 1976.*”

A *club* is not a permissible land use in the Village - Tourist zone under LEP 2005, and the Katoomba RSL maintains existing use rights to operate a *club* (or the equivalent land use under LEP 2015, being *registered club*) on the site.

Existing use rights are governed by *Environmental Planning and Assessment Act 1979* (the Act) and the *Environmental Planning and Assessment Regulation 2000* (the Regulation) and provide for the rebuilding of a building, the enlargement or expansion or intensification of an existing use. However, clause 42 of the Regulation limits the rebuilding to the site on which the existing use rights operates. Although the existing use rights for a *club* on 70-86 Lurline Street allows for the rebuilding of the destroyed building, existing use rights do not allow for the use to be extended to the subject site, 4 Merriwa Street, Katoomba.

The current zone on the subject site (4 Merriwa Street, Katoomba) is R2 Low Density Residential under LEP 2015. The RSL use would be defined as *registered club* under LEP 2015, which is defined as “a *club that holds a club license under the Liquor Act 2007*”. The R2 Low Density Residential zone prohibits the use of the site for development for the purpose of a *registered club*.

Therefore, as existing use rights cannot be extended onto the 4 Merriwa Street site, and the land use *registered club* is not permitted under the current zoning on the subject site, the Planning Proposal seeks to amend Schedule 1 of LEP 2015, to permit with consent the use *registered club* on the subject site, 4 Merriwa Street, Katoomba.

Amending Schedule 1 of LEP 2015 to allow a *registered club* as permissible with consent on 4 Merriwa Street, Katoomba is considered the most efficient process to accommodate the future expansion of the RSL onto the subject site. This is primarily because no mapping amendments are required for such a Planning Proposal, which will expedite assessment by the Department of Planning and Environment.

The Planning Proposal

A Planning Proposal has been prepared by Genevieve Slattery Urban Planning and was lodged with Council on the 15 August 2017. The Planning Proposal seeks to amend LEP 2015 by including the land use, *registered club*, in Schedule 1 - Additional permitted uses for the subject site at 4 Merriwa Street, Katoomba.

The inclusion of an additional permitted use for the site requires the making of an amending LEP under Part 3 of the *Environmental Planning and Assessment Act 1979*. The applicable Principal LEP is LEP 2015. The Planning Proposal is provided at Enclosure 1 to this report and explains the intended effect of the proposed amending LEP, as well as the justification for making it.

Merits of the Planning Proposal

As discussed above, the site is located between the Katoomba RSL site itself (to the west) and Katoomba Primary School (to the east). These uses are long standing. The RSL club has existed on the site since 1923 and the school has operated on the site since 1982 (Office of Environment and Heritage). The subject land represents an isolated parcel of residential land, surrounded on three sides by non-residential land uses.

Additionally, informal access to the subject land is currently provided through the RSL site, with no formed vehicular access into the subject site from Merriwa Street. This same access point through the RSL site also provides vehicular access to the western side of the Primary School grounds. As such, these two large non-residential uses have co-existed for a significant period of time, and while the subject land maintains a residential land use, at certain practical levels, it is absorbed into the RSL site. The proposal to permit with consent a *registered club* on the subject site creates a legal planning pathway for the RSL to expand

onto the site, subject to a development approval. Any future development, including development for the purpose of a *registered club*, on 4 Merriwa Street, Katoomba would be required to consider the impact of development on adjoining properties.

The proposal, to permit with consent the use *registered club* on the subject site is therefore consistent with the long standing approved use of the adjoining site, and will provide an opportunity for the extension of the RSL once a development application is lodged and approved for its re-establishment, thereby expanding the services and facilities it provides to the community, including employment opportunities.

The planning proposal is considered to have strategic merit for the reasons outlined above.

Delegated authority

The Department of Planning and Environment has returned some of the responsibility for plan making back to Councils. The changes give local councils responsibility for LEPs of local significance, including spot rezoning consistent with surrounding zones. The delegation operates in respect of a draft LEP on receipt by council of a Written Authorization to Exercise Delegation and is issued as part of the Gateway Determination. The proposal is considered to be low impact and for this reason Council will seek delegated authority under section 59 of the *Environmental Planning and Assessment Act 1979*.

Consultation

The Gateway Determination is issued by the Greater Sydney Commission (GSC) and prescribes the community consultation that must be undertaken on the Planning Proposal. Generally, Planning Proposals require a consultation period of 28 days, however the consultation period may be tailored for specific proposals and 'low impact proposals' may require an exhibition period of only 14 days.

The Department of Planning and Environment guideline, "*A guide to preparing local environmental plans*" advises that a 'low' impact Planning Proposal is:

- consistent with the pattern of surrounding land use zones and/or land uses;
- consistent with the strategic planning framework;
- presents no issues with regard to infrastructure servicing;
- not a principal LEP;
- does not reclassify public land.

It is considered that this proposal meets the 'low impact' criteria for the following reasons. The proposal is consistent with the strategic planning framework and the site is capable of being serviced. In addition, the planning proposal is for a single lot in private ownership and is therefore not a principal LEP nor does it require reclassification of public land.

Notification of public exhibition will be sent to all adjoining land owners and accompanied by an advertisement in the Blue Mountains Gazette and material in the Have Your Say section on Council's website.

Sustainability Assessment

Effects	Positive	Negative
Environmental	Development on the adjoining parcel will provide for a single storey building, thereby contributing positively to the streetscape.	Nil

Effects	Positive	Negative
Social	There are no foreseeable adverse social impacts arising from the recommendations of this report. The proposal does not alter the land use zone on the site but will provide an additional land use to be carried out in conjunction with a long established adjoining land use.	Nil
Economic	The additional permitted use will allow for consideration of the expansion of an adjoining existing use.	Nil
Governance	The proposal has been assessed and found to have merit. The additional permitted use for the site is considered to be appropriate in this context on an environmental, social and economic level. The planning proposal process is to follow the State government Gateway Process, including transparent community consultation.	Nil

Financial implications for the Council

There are no foreseeable financial implications for the Council as a consequence of proceeding with the Planning Proposal as recommended.

Legal and risk management issues for the Council

There are no foreseeable legal or risk management issues for the Council as a consequence of proceeding with the Planning Proposal as recommended.

External consultation

The Gateway Determination will prescribe the consultation required with the community and with State and Commonwealth authorities. It is considered that the Planning Proposal meets the criteria for low impact development and while this results in a reduced consultation period, the proposal will be publically exhibited.

Conclusion

This report recommends that the Council resolve to commence the process to amend LEP 2015 by including the land use, *registered club*, in Schedule 1 - Additional permitted uses for 4 Merriwa Street, Katoomba, being Lot 1 DP 124212.

This application to include the land use *registered club* as an Additional Permitted Use is found to have merit, is the most appropriate mechanism to achieve the planning intent, and will not result in any foreseeable adverse environmental, social or economic impacts. A Planning Proposal (Enclosure 1) has been prepared by a consultant, in accordance with section 55 of the *Environmental Planning and Assessment Act 1979* and it is a recommendation of this report that it be forwarded to the Greater Sydney Commission for assessment and Gateway Determination in accordance with section 56 of the Act.

The Planning Proposal will also be accompanied by a request to the GSC that the proposal be considered to be low impact, and the Council will also seek delegations for this proposal.

ATTACHMENTS/ENCLOSURES

1	Amendment 9 to LEP 2015 - Planning Proposal - 4 Merriwa Street, Katoomba	17/175962	Enclosure
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